THE HON'BLE MR. JUSTICE S. ANANDA REDDY

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W.P.No. 7708 of 2005

Dated: August 11, 2005

Between:

Savithri Devi

…Petitioner

and

Ms/. Bharat Sanchar Nigam Limited,

Rep. by its Chairman-cum-Managing Director

Sanchar Bhawan, New Delhi, & Others.

…Respondents

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O R D E R:

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This Writ Petition is filed seeking writ of mandamus to declare the letter dated 18.01.2005 issued by the 5th respondent at the instance of the 4th respondent as illegal and arbitrary and set aside the same by directing the respondents to refund the amount recovered from the salary of the petitioner from July 2004 onwards towards alleged overpayment along with interest at the rate of 18% per annum with all consequential benefits such as pay and allowances, counting the service for all pensionary benefits etc.

2. According to the petitioner, while she was working under the 4th respondent as

Assistant Accounts Officer, she availed leave for the period from 21st October 2002 to 4th March 2003 on medical grounds as she was sick. According to the petitioner, the leave applied for by her was never rejected by the competent authority in the year 2002-03 and in fact, the petitioner was paid the pay and allowances for the period of leave on medical grounds, since the claim of the petitioner was not rejected. However, subsequently, the respondents started deducting the amounts from the pay of the petitioner without therebeing any specific order, which was communicated to the petitioner. In the month of July 2004, an amount of Rs.4,000/- was deducted stating that it was the excess pay allowed to the petitioner. Again from August 2004 similar deductions at the rate of Rs.5,000/- was made, and even for the subsequent deductions also there was no notice or any order, which was communicated to the petitioner except showing the pay slip towards the over payment. Therefore, the petitioner contends that the action of the respondents is illegal and without jurisdiction in making such deductions without passing any order and communicating the same to the petitioner. Therefore, the petitioner made a representation, in response to which a letter was communicated by the Accounts Officer, dated 18.01.2005 stating that the deduction was as per the letter dated 29.12.2004 received from CAO (TR-INV) West, regarding the leave spell of the petitioner's absence from 21.10.2002 to 04.03.2003 treated as 'Dies-non', and hence over payment have been worked to Rs.55,395/- for the above period; and from July 2004 to December 2004 an amount of Rs.29,000/- was recovered, and the balance amount will be recovered in equal instalments. Therefore, the petitioner has come up with the present Writ Petition alleging that the said letter stated to have been received by the Accounts Officer, the 5th respondent herein, was never communicated to the petitioner, and, in fact, if there is any over payment, there should be a notice to the petitioner before determining the over payment, if any. Further, the grievance of the petitioner is that as the petitioner has availed the medical leave for the period in question, the question of considering the same as 'dies-non' would not arise, as no such order was also communicated to the petitioner. Hence, the petitioner sought for appropriate relief.

3. The learned Standing Counsel for the respondents, however, stated that no leave

application was ever made by the petitioner, and therefore, the question of availing leave on medical grounds does not arise. Even otherwise also, as the petitioner had absented from duty without obtaining any leave being sanctioned, the petitioner is not entitled for any monetary relief. Therefore, the respondents have resorted for the recovery of the excess payment. The learned Standing Counsel, however, fairly conceded that there is an irregularity on the part of the respondents that without therebeing an order, after issuing a show cause notice and opportunity to the petitioner the recoveries resorted by the respondents was not just and proper.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel for respondents, and considered the material on record.

5. In view of the rival contentions, the petitioner is directed to make a representation for regularisation of the leave period, within two weeks from today and, on such representation, the respondents are directed to consider the same and grant leave to the extent available to the petitioner and thereafter pass appropriate orders within four weeks from the date of receipt of such representation. Till disposal of the said representation, the respondents are directed not to make any further deductions from the salary of the petitioner, if there is any excess payment received by the petitioner.

6. The Writ Petition is disposed of accordingly at the admission stage itself. No costs.

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S.Ananda Reddy, J.

11…08…2005

Note: Issue CC by tomorrow.

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